IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 15 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)

Versus

SWASTIK EXPORT - Respondent(s)

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Appearance :
MR VM PANCHOLI, AGP, for Applicant
Respondent served
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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 16/01/2006

ORAL JUDGMENT (Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

This reference made under section 69 of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as '**the**

Act') arises from the common judgment and order dated 12th December, 1989, passed by the Gujarat Sales Tax Tribunal (hereinafter referred to as '**the Tribunal**') in Revision Applications Nos. 82 and 83 of 1986.

2. The respondent, M/s Swastik Exports is a 'dealer' within the meaning of the Act. The respondent has its business in Kandla Free Trade Zone of import and sale of stethoscope, sphygmomanometer and shampoo. During the years 1981-82 and 1982-83, the dealer sold corrugated cardboard boxes worth Rs. 3,781/- and Rs. 16,370/-, respectively. On the said sale, the dealer assessed sales tax at the rate of 4% as stipulated under entry 12(iv) in Schedule II, Part-A to the Act. The said assessment was accepted by the Assessing Officer. However, the order of the Assessing Officer was taken into suo motu revision. In revision, the Assistant Commissioner of Sales-tax, by his order dated 26th April, 1986, held that the material sold by the dealer was 'waste corrugated boxes' and was governed by the residual entry No. 13 in Schedule III to the Act. The rate at which the tax was leviable was, therefore, 10% and imposed penalty under Section 45(6) of the Act. The revisional authority accordingly raised, after deducting the amount of tax paid, demand for a sum of Rs. 1,469.22.

Feeling aggrieved, the dealer preferred the above-referred revision applications Nos. 82 and 83 of 1986 before the Tribunal. The Tribunal, by its judgment and order dated 12th December, 1989, upheld the claim of the dealer holding that what the dealer sold were corrugated cardboard boxes which were covered by entry 12(iv) in Schedule II, Part-A to the Act.

3. The present reference has been made at the instance of the Revenue. The Tribunal has referred the following two questions for decision by this Court:

"(1) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that sales of Rs. 3,781/- and Rs. 16,370/- of the opponent during periods 1981-82 and 1882-83, respectively, were sales of corrugated boxes and not of waste of corrugated boxes is perverse?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the said sales of Rs. 3,781/- during the year 1981-82 and Rs. 16,370/- during the year 1982-83 made by the opponent were assessable to tax at 4% sales tax under entry 12(iv) in Schedule II, Part-A to the

Gujarat Sales Tax Act, 1969 or whether they were assessable to tax under entry 13 in Schedule III to the Act, as the sales of waste?"

4. The matter at issue lies in a narrow compass i.e whether what the dealer sold was corrugated cardboard boxes as maintained by the dealer, or was it waste of the corrugated cardboard boxes as maintained by the Revenue.

5. Mr. Pancholi has submitted that what the dealer sold was the waste of corrugated cardboard boxes and that they were sold by 'weight'. He has submitted that the sales made by the dealer mentioned "**imported corrugated waste**" or **"indigenous corrugated waste"**. Thus, it is evident that what the dealer sold was waste of corrugated cardboard boxes and not corrugated cardboard boxes which are used for packing materials.

6. We are unable to agree with Mr. Pancholi. The Tribunal has considered the rival claims made by the dealer and the Revenue. What the dealer claimed was that the goods purchased by it came in corrugated cardboard boxes. After removing the materials, the dealer sold

away the corrugated cardboard boxes as they were. Whatever be the nomenclature, the dealer did sell corrugated cardboard boxes.

7. Relevant entry 12(iv) in Schedule II Part-A to the Act refers to "**cardboard boxes and cartons**". Relevant entry 13 in Schedule III to the Act is a residual entry, which reads as under :

> **"All goods other than those specified from time to time in sections 18, 19A, 19B and 19C and in Schedules I and II and in the preceding entries."**

8. In our considered view, the Revenue has failed to prove that the materials sold by the dealer were not corrugated cardboard boxes, but were waste of such corrugated cardboard boxes. In view of specific entry 12(iv) referred to hereinabove, the Revenue cannot be permitted to fall back upon residual entry 13. We are of the opinion that the Tribunal has rightly held that the dealer was liable to pay tax on sale of corrugated cardboard boxes in accordance with entry 12(iv) in Schedule II, Part-A to the Act.

9. In view of the above discussion, we answer question

No. 1 in negative in favour of the dealer and against the Revenue. We answer question No. 2 in affirmative in favour of the dealer and against the Revenue.

The Reference stands disposed of accordingly.

(**Anil R. Dave, J.**)

(**Ms. R.M. Doshit, J.**)

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